



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1996

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR96-0499

Dear Ms. Gay:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37759.

The Harris County Office of Risk Management received a request for the following information concerning a vehicle that was allegedly struck by an object propelled by a Harris County mower. Specifically, the requestor seeks the following information:

- (1) copy of the "incident report" filed by the investigating deputy sheriff.¹
- (2) copies of all photographs taken at the scene of the incident.
- (3) copy of any "statement" made by the tractor operator.
- (4) other relevant information concerning the accident.

¹We note that the document responsive to this request has a notation which states that the document is confidential. Marking something as confidential does not necessarily make it so. A document is only excepted from disclosure if it falls within one of the exceptions of the Open Records Act. Open Records Decision No. 363 (1983). Moreover, we are not aware of any statutes that make an internal accident report form confidential. We note that, it is a criminal offense to fail to release public information. Government Code § 552.353

You assert that the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. You have submitted a letter to this office that you purport to be a notice of claim. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA or an applicable municipal statute or ordinance.²

Our review shows that the records at issue are related to the anticipated litigation. Thus, you have shown the applicability of section 552.103(a) and the information at issue may be withheld from required public disclosure.³

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, you may choose to release the information at this time. Government Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records.

²We note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA.

³Because you may withhold these documents under section 552.103, we need not address your other arguments against disclosure.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/rho

Ref.: ID# 37759

Enclosures: Open Records Decision No 638 (1996)
Submitted documents

cc: Mr. R. Lynn McCoy
Attorney at Law
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The Woodlands, Texas 77380
(w/enclosures-Open Records Decision No. 638 (1996))